



COLLEGE OF LAW
STUART H. SMITH LAW CLINIC

VIA EMAIL ONLY TO NEW ORLEANS CITY COUNCIL:

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April 18, 2019

RE: **Ordinance Number 32, 262 to Amend Art. XII, Ch. 82 Code of the City of New Orleans**

Dear Councilmembers:

The proposed amendment to the code referenced above will present a significant and unnecessary hardship on homeless residents of the City of New Orleans. While we recognize the City's interest in public safety, that rationale cannot be used as an excuse to deprive homeless people of belongings including personal identification, life-saving medications, and eyeglasses amongst other personal items. The ordinance's requirement that identification be provided in order to retrieve medication is not logical because that identification very likely could have been seized along with the individuals' other possessions.

Homelessness is the result of a combination of factors including the reality that the City of New Orleans does not provide sufficient safe and affordable housing, which results in our community members, including the elderly and children, sleeping on the street. Under the proposed ordinance, inevitably, new encampments will arise as the City demolishes those in place without a plan to provide affordable housing or shelter. This will perpetuate a cycle of instability and suffering. We urge you to reconsider the proposed ordinance. The proposed forced eviction contemplated by this ordinance is not a sound or sustainable policy solution.

The U.S. Interagency Council on Homelessness stated in guidance on encampments that, "the forced dispersal of people from encampment settings is not an appropriate solution or strategy, accomplishes nothing toward the goal of linking people to permanent housing opportunities, and can make it more difficult to provide such lasting solutions to people who have been sleeping and living in the encampment." U.S. Interagency Council on Homelessness, Ending Homelessness for People Living in Encampments: Advancing the Dialogue (Aug. 2015) available at https://www.usich.gov/resources/uploads/asset_library/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.pdf.

Courts have recognized that homeless people cannot be deprived of their property interests without due process. *5 Mitchell v. City of Los Angeles*, Case No.: 16-cv-01750 SJO (JPR) (C.D. Cal. April 2016); *Allen v. City of Pomona*, No. 16-cv-1859 (C.D. Cal. filed Mar. 18, 2016); *Kincaid v City of Fresno*, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006) (finding that homeless people have rights under the 4th and 14th Amendments to the US Constitution, which prohibit the City from destroying the property of homeless people in sweeps or evictions of homeless people).

The proposed 24-hour notice period is particularly problematic and does not meet the standards of pre-deprivation notice under the U.S. Constitution. In the past, this Council has even recognized that a 72-hour waiting period is more appropriate (Aug. 20, 2014, City Council hearing). At a minimum, the City should provide at least 72 hours prior to the enforcement of the proposed ordinance written notice to any homeless person whose property (medication, tent, household furnishings, or any other item in a public place) is subject to removal pursuant to the proposed ordinance.

The Routine Remediation areas and Temporary Emphasis Area are designations that are nothing more than pretext to prevent homeless people from occupying any area of the City. As such, these designations are both vague and overbroad in violation of U.S. Constitutional standards.

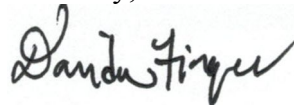
The Emergency Powers section of the ordinance provides no standards to determine where such will be enforced. As such, this designation is both vague and overbroad in violation of U.S. Constitutional standards.

Finally, we are also concerned about other consequences for homeless people should this ordinance be enacted and request assurance that there will not be:

- Criminal enforcement of homeless people including arrests and fines including without proper summons and procedures;
- Property removal without service providers present to provide support and assistance;
- Seizure and destruction of property without a formal court summons, opportunity for the owner of the property to be heard, and an effective mechanism that preserves U.S. Constitutional due process rights.

Please contact us to discuss this further at 861-5596. Thank you for your consideration.

Sincerely,



Davida Finger
Clinic Professor

Bill Quigley
Clinic Director